

W. KEITH HOWARD

IBLA 80-438

Decided March 2, 1981

Appeal from decisions of New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers NM-38076 and NM-38081.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

43 CFR 3102.6-1 sets forth the statements and evidence required when an attorney-in-fact or agent signs a simultaneous oil and gas lease drawing entry card on behalf of the applicant. Where an offer is signed and completed by a father acting as agent for his son, and where the father advises the son as to the selection of the parcel, the applicant cannot be considered "qualified" and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

APPEARANCES: W. Keith Howard, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

W. Keith Howard appeals from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated February 1 and February 7, 1980, rejecting his oil and gas lease offers NM-38076 and NM-38081.

The record shows that the simultaneously filed drawing entry cards (DEC's) of W. Keith Howard were drawn first by the New Mexico State Office, BLM, in a drawing held August 7, 1979, to determine the priority for awarding oil and gas leases covering parcel Nos. NM-1065 and NM-1074. The DEC's were signed manually with the signatures reading "W. Keith Howard."

On August 30, 1979, BLM issued its decisions requiring appellant to submit additional evidence by answering questions surrounding the circumstances of his offers. By answering the questions, appellant informed BLM that his father, Charles H. Howard, had filled out the blanks on appellant's DEC's; that appellant's father had signed the cards for appellant and had been given authority to sign on appellant's behalf as his agent; that his father had signed the cards acting as his agent, in appellant's absence, with his consent and instruction; that no one furnished him with information or assisted him in filling out the cards; that there was no agreement between him and his father.

BLM issued its decisions on February 1 and February 7, 1980, which read in pertinent part:

By decision dated August 30, 1979, we requested additional information from Warren K. Howard. The information was received September 17, 1979, and Warren K. Howard states that he did not personally sign the entry card. He states Charles H. Howard signed it on his behalf. Since Charles H. Howard signed on behalf of Warren K. Howard, compliance with 43 CFR 3102.6-1 is mandatory. Our records do not show that Charles H. Howard filed evidence of his authority to sign on behalf of Warren K. Howard as required by 43 CFR 3102.6-1 (a) (1). Furthermore, the statements required by 43 CFR 3102.6-1 (a) (2) did not accompany the offer. See attached Circular 2357.

In his statement of reasons appellant contends that his father was given "full legal authority" to sign appellant's name on the DEC's. He contends that no fraud or breach of the regulations was intended and that the technical breach arose from the fact that he was unable to memorize 24 pages of Circular 2357. Appellant adds that only a law school graduate would be able to interpret 43 CFR 3102.6-1 and enter the simultaneous oil and gas lease drawings.

By order of November 28, 1980, the Board requested additional information. In his response appellant stated that he did not personally select the parcels listed on the DEC's and that he was advised by his father.

[1] The DEC's which appellant filed in the August 7, 1979, drawing contain instructions which, inter alia, provide that "compliance must also be made with the provisions of 43 CFR.3102." This

regulation defines the qualifications of lessees, and 43 CFR 3102.6-1 more specifically sets forth the statements and evidence required when an attorney-in-fact or agent signs an offer on behalf of the applicant. That regulation, 43 CFR 3102.6-1, provides in part that:

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one.

If an offer is signed by an agent or attorney-in-fact, it is well settled that the applicant cannot be considered "qualified," and the offer to lease drawn with first priority cannot be accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card. Rebecca J. Waters, 28 IBLA 381 (1977); Southern Union Production Co., 22 IBLA 379 (1975); Husky Oil Co., A-30440 (Oct. 27, 1965).

The issue before us is whether the offeror's father acted as an "agent" within the meaning of the regulation by completing and signing the DEC's for his son, or whether the father was functioning merely as the son's amanuensis.

We find that he was acting as his son's agent within the meaning of 43 CFR 3102.6-1(a)(2). In answering the Board's questions, appellant

revealed that he did not personally select the parcels in question and that his father advised him. From these facts it is evident that the father exercised discretion in this matter. Where a person exercises discretion in selecting the land and filing the offer on behalf of the offeror, that person is acting as the offeror's agent, and the separate statements required by 43 CFR 3102.6-1(a)(2) must be filed, failing which the offer must be rejected. See Lorenz K. Ayers, 50 IBLA 240 (1980); D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), aff'd in part, rev'd in part, 1/ sub nom. Stewart Capital Corp. v. Andrus, Civ. No. C-79-123K (D. Wyo. Apr. 24, 1980) and Runnells v. Andrus, Civ. No. C 77-0268 (D.C.D. Utah, Feb. 19, 1980); Ray H. Thames, 31 IBLA 167 (1977), aff'd sub nom. McDonald v. Andrus, Civ. No. S 77-0333(c) (D.S.D. Miss. Jan. 29, 1980); Robert C. Leary, 27 IBLA 296 (1976). Only in the event that the role of the father was limited to that of a mere scrivener, or amanuensis, would the necessity for the compliance with the regulation be avoided. 2/ See Rebecca J. Waters, supra.

It is unfortunate that appellant was confused by the regulations. Such confusion, however, cannot excuse appellant's failure to file the

1/ The Board's decision was affirmed by the District Courts in Mississippi, Utah, and Wyoming as to its interpretation of what the regulation required, and reversed by the District Courts in Wyoming and Utah only as to its retroactive application of the interpretation.

2/ Under revised regulation 43 CFR 3112.2-1(b), published on May 23, 1980, 45 FR 35156 and 35164, effective June 16, 1980, applications signed by anyone other than the applicant must be rendered in such a manner so as to reveal the name of the applicant, the name of the signatory, and their respective relationship.

required documents. All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Dale E. Henkins, 52 IBLA 9 (1981); John J. O'Loughlin, 50 IBLA 50 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

